

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

\$102,836.00 IN UNITED STATES  
CURRENCY,

Defendant.

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SANTIAGO CRUZ,

Claimant.

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3:10-CV-00682-LRH-WGC

ORDER

This is a civil forfeiture action. Before the Court is Claimant Santiago Cruz's ("Cruz") Motion to Suppress Evidence Pursuant to Supplemental Rule G(8). Doc. #27. The United States filed an Opposition (Doc. #28), to which Cruz replied (Doc. #31).

**I. Facts and Procedural History**

On July 12, 2010, Cruz was driving westbound on Interstate 80 near Sparks, Nevada when Nevada Highway Patrol ("NHP") Trooper Jason Phillips ("Phillips") pulled him over for speeding and for an obtrusively-placed Global Positioning System ("GPS") device mounted on Cruz's windshield.<sup>1</sup> Doc. #29, ¶4. Thereafter, Phillips approached Cruz's vehicle to request identification.

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<sup>1</sup> It is against Nevada law to drive a vehicle at a rate of speed greater than the posted speed limit (NRS 484B.600) and to drive a vehicle with an obstructed front windshield (NRS 484D.435).

1 Doc. #29, ¶8. Cruz produced his Nevada driver's license. *Id.* Phillips informed Cruz that it was  
2 not his intention to issue a citation, but that he would conduct a routine check of Cruz's license.  
3 Doc. #29, ¶9. Cruz then volunteered that the car was a rental, and produced the rental agreement,  
4 which stated that the rental period for the vehicle began on June 28, 2010, in Las Vegas, Nevada,  
5 and was due back to Las Vegas one week earlier, on July 5, 2012. Doc. #29, ¶12. Cruz explained  
6 that he had extended the rental term over the phone. Doc. #27, p. 3.

7       Upon approaching the vehicle, Phillips recognized the odor of marijuana and the strong  
8 odor of air freshener coming from the interior of the vehicle. Doc. #29, ¶10. Phillips also observed  
9 Cruz to exhibit signs of nervousness and anxiety as he was looking for the rental agreement and  
10 repositioning the GPS device. Doc. #29, ¶13. While the records check was being processed,  
11 Phillips contacted NHP Trooper Erik Lee ("Lee") to inquire as to the availability of a canine unit.  
12 Doc. #29, ¶15. Lee informed Phillips that his NHP vehicle was temporarily out of service and that  
13 he would arrive to the location with a canine as soon as possible. *Id.* Thereafter, Phillips requested  
14 that Cruz exit the vehicle. Doc. #29, ¶11. When Cruz exited the vehicle, Phillips smelled  
15 marijuana on Cruz's person. *Id.* Phillips then conducted a search of Cruz's person for weapons,  
16 but discovered none. *Id.*

17       Also while awaiting the results of the records check, Phillips inquired as to Cruz's criminal  
18 history. Doc. #29, ¶16. Cruz responded that he had one prior drug-related arrest. *Id.* Cruz's  
19 record check subsequently confirmed a drug-related arrest and conviction for drug trafficking. *Id.*  
20 Phillips also asked Cruz if he possessed any methamphetamine, and Cruz replied that he did not.  
21 *Id.* Finally, Phillips inquired about Cruz's travel plans, and Cruz stated that he was driving back  
22 from Battle Mountain, Nevada to Fairfield, California in order to pick his mother up for a friend's  
23 funeral back in Battle Mountain. *Id.* Cruz also stated that he had rented the vehicle in Las Vegas to  
24 drive to Battle Mountain to visit family. *Id.* Additionally, Cruz admitted that he used to sell drugs  
25 in Battle Mountain, but was no longer involved in that illegal activity. *Id.*

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1           Thereafter, Phillips returned Cruz's license and rental agreement and informed Cruz that he  
 2 would not issue a citation and Cruz was free to go. Doc. #29, ¶17. Before Cruz had returned to the  
 3 vehicle, Phillips asked to conduct a search of the vehicle. *Id.* Cruz declined, and Phillips informed  
 4 him that he was being detained until the narcotics canine unit arrived. *Id.* Phillips then returned to  
 5 his patrol car to inquire as to the availability of a canine unit with the Reno Police Department  
 6 ("RPD") or the Washoe County Sheriff's Office ("WCSO"). Doc. #29, ¶18. No canine units were  
 7 available from either RPD or WCSO. *Id.* Phillips was thereafter informed that Lee was en route to  
 8 his location with a canine unit. Doc. #29, ¶20. Lee and canine "Petey" arrived twenty to thirty  
 9 minutes after the initial traffic stop had concluded. Doc. #29, ¶¶ 18-20; Doc. #27, p. 4. Upon  
 10 arrival, Petey positively alerted to the trunk and the rear passenger door of Cruz's vehicle. Doc.  
 11 #29, ¶21. A subsequent search of Cruz's vehicle yielded two bags containing cash, one in the trunk  
 12 and one in the back seat of the car. Doc. #16, ¶16. The currency in the two bags totaled  
 13 \$102,836.00. *Id.* The search also yielded discovery of an air freshener container under the front  
 14 passenger seat of the vehicle. Doc. #29, ¶23; Doc. #29, Ex. 17.

## 15       **II.       Legal Standard**

16           Rule G(8)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset  
 17 Forfeiture Actions provides that "[i]f the defendant property was seized, a party with standing to  
 18 contest the lawfulness of the seizure may move to suppress use of the property as evidence." A  
 19 motion to suppress brought by a claimant in a civil forfeiture proceeding is akin to one brought by a  
 20 defendant in a criminal case. *See One 1958 Plymouth Sedan v. Pa.*, 380 U.S. 693, 696-702 (1965)  
 21 (holding that the Fourth Amendment is applicable to forfeiture proceedings); *see also* Civil Asset  
 22 Forfeiture Reform Act of 2000, 18 U.S.C. § 981(b)(2)(B) (requiring that seizures be made pursuant  
 23 to a warrant or based upon probable cause and pursuant to a lawful arrest or search). As such, the  
 24 exclusionary rule applies in civil forfeiture cases. *One 1958 Plymouth Sedan*, 380 U.S. at 702;  
 25 *United States v. \$493,850.00 in U.S. Currency*, 518 F.3d 1159, 1164 (9th Cir. 2008). The rule  
 26 "bars the admission of evidence obtained in violation of the U.S. Constitution, as well as 'fruits of

1 the poisonous tree.” \$493,850.00 in U.S. Currency, 518 F.3d at 1164 (quoting *United States v.*  
2 *Ramirez-Sandoval*, 872 F.2d 1392, 1395 (9th Cir. 1989)). “[U]nder the ‘fruits of the poisonous  
3 tree’ doctrine, evidence obtained subsequent to a violation of the Fourth Amendment is tainted by  
4 the illegality and is inadmissible . . . .” *Id.* at 1164-65 (quoting *United States v. Washington*, 490  
5 F.3d 765, 774 (9th Cir. 2007)).

### 6 **III. Discussion**

7 Here, Cruz does not challenge the legality of the initial traffic stop based on Phillips’  
8 observed traffic violations. *See Whren v. United States*, 517 U.S. 806, 810 (1996) (the decision to  
9 stop an automobile is reasonable under the Fourth Amendment where the police have probable  
10 cause to believe that a traffic violation has occurred); *see also United States v. Wallace*, 213 F.3d  
11 1216, 1219-20 (9th Cir. 2000) (the constitutionality of a traffic stop turns on whether there was an  
12 objective basis for the officer to believe that a traffic violation or some other infraction has been  
13 committed). Rather, Cruz challenges only the legality of his “prolonged detention,” which  
14 followed the initial traffic stop, but preceded the positive canine alert and subsequent search of  
15 Cruz’s rental car.<sup>2</sup> *See* Doc. #27, p. 5. Indeed, the authority and limits of the Fourth Amendment’s  
16 protection against unreasonable searches and seizures applies to investigative stops of vehicles such  
17 as the one at issue here. *United States v. Sharpe*, 470 U.S. 675, 682 (1985). In *Terry v. Ohio*, the  
18 Supreme Court adopted a dual inquiry for evaluating the reasonableness of an investigative stop.  
19 *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). Specifically, courts are to evaluate “whether the  
20 officer’s action was justified at its inception, and whether it was reasonably related in scope to the  
21 circumstances which justified the interference in the first place.” *Terry*, 392 U.S. at 20.

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23 <sup>2</sup> The Court notes that because a routine traffic stop may also include an assessment by a  
24 trained narcotics canine without implicating the Fourth Amendment, the prolonged detention at issue  
25 concluded upon the arrival of Lee and Petey. *See Illinois v. Caballes*, 543 U.S. 405, 409-10 (2005)  
26 (canine sniff of vehicle already lawfully detained during a traffic stop is not a new search and therefore  
does not require any suspicion as long as the driver is not detained longer than necessary for the traffic  
stop). Moreover, the positive canine alert by Petey supplied the requisite probable cause to search the  
vehicle without a search warrant. *United States v. Ibarra*, 345 F.3d 711, 715-16 (9th Cir. 2003).

1           **A. Reasonable Suspicion**

2           As to the first prong of the inquiry, an investigative stop is only permissible where “the  
3 officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be  
4 afoot[.]’” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *Terry*, 392 U.S. at 30). Whereas,  
5 here, the legality of the initial traffic stop is not at issue, the Court must evaluate whether the officer  
6 developed a “reasonable suspicion” of criminal activity sufficient to justify continued investigative  
7 detention under *Terry v. Ohio*. See *Caballes*, 543 U.S. at 407 (“seizure that is justified solely by  
8 the interest in issuing a warning ticket to driver can become unlawful if it is prolonged beyond the  
9 time reasonably required to complete that mission”); see also *United States v. Turvin*, 517 F.3d  
10 1097, 1100-04 (9th Cir. 2008) (duration of traffic stop is evaluated for reasonableness under the  
11 totality of the circumstances; traffic stop is not unreasonably prolonged where officer briefly pauses  
12 to ask questions unrelated to the purpose of the stop); *United States v. Motley*, 344 Fed. Appx. 445,  
13 at 446 (9th Cir. 2009) (30-minute delay between when officer completed his independent  
14 investigation and the time the drug dog arrived ran afoul of Fourth Amendment because officer  
15 lacked reasonable suspicion of criminal activity to justify continued detention) (citing *United States*  
16 *v. Luckett*, 484 F.2d 89, 91 (9th Cir. 1973)).

17           The officer “must be able to articulate something more than an ‘inchoate and  
18 unparticularized suspicion or hunch.’” *Sokolow*, 490 U.S. at 7 (quoting *Terry*, 392 U.S. at 27)  
19 (internal quotation marks omitted). “The Fourth Amendment requires ‘some minimal level of  
20 objective justification’ for making the stop.” *Id.* (quoting *INS v. Delgado*, 466 U.S. 210, 217  
21 (1984)). Nevertheless, “the level of suspicion required for [an investigative] stop is obviously less  
22 demanding than that for probable cause[.]” *Id.* (citing *United States v. Montoya de Hernandez*, 473  
23 U.S. 531, 541 (1985)). In assessing the legality of an investigative stop, courts must consider the  
24 “totality of the circumstances.” *Id.* at 8 (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981));  
25 *United States v. Arvizu*, 534 U.S. 266, 273 (2002). The totality of the circumstances encompasses,  
26 among other things, “objective observations, information from police reports, . . . , and

1 consideration of the modes or patterns of operation of certain kinds of law-breakers.” *United States*  
2 *v. Berber-Tinoco*, 510 F.3d 1083, 1087 (9th Cir. 2007) (citing *Cortez*, 449 U.S. at 418). Moreover,  
3 the circumstances must be considered from the perspective of an officer with relevant experience  
4 and training. *See Arvizu*, 534 U.S. at 273 (courts must consider the facts from the perspective of an  
5 experienced officer when assessing whether reasonable suspicion exists).

6 Here, Phillips articulates at least six circumstances and observations, all of which were  
7 ascertained during the course of the traffic stop, that justify Cruz’s continued detainment for  
8 investigatory purposes. Doc. #28, pp. 22-24. While these factors, taken individually, may not be  
9 sufficient to justify a prolonged investigatory detention, taken together, the Court finds that they  
10 amount to reasonable suspicion sufficient to support the same. *See Sokolow*, 490 U.S. at 9 (finding  
11 that any one of the cited factors was not by itself proof of illegal conduct, but taken together they  
12 amounted to reasonable suspicion). Moreover, that there may be an entirely innocent and lawful  
13 explanation for many of these circumstances does not change the Court’s determination. *See Reid*  
14 *v. Georgia*, 448 U.S. 438, 441 (1980) (per curiam) (“there could, of course, be circumstances in  
15 which wholly lawful conduct might justify the suspicion that criminal activity was afoot”). “Terry  
16 itself involved ‘a series of acts, each of them perhaps innocent’ if viewed separately, ‘but which  
17 taken together warrant further investigation.’” *Sokolow*, 490 U.S. at 9-10 (citing *Terry*, 392 U.S. at  
18 22). Accordingly, “even when factors considered in isolation from each other are susceptible to an  
19 innocent explanation, they may collectively amount to a reasonable suspicion.” *Berber-Tinoco*,  
20 510 F.3d at 1087.

21 *1. Odor of Marijuana*

22 Upon approaching Cruz’s vehicle, Phillips recognized the odor of marijuana coming from  
23 the interior. Doc. #29, ¶10. Phillips also smelled marijuana on Cruz’s person when Cruz exited  
24 the vehicle. *Id.* at ¶11. Here, the Court finds that Phillips’ detection of the odor of marijuana  
25 coming from the vehicle and from Cruz’s person, standing alone, would be sufficient to support  
26 continued investigative detention under *Terry* based on a reasonable suspicion of criminal activity.

1 See *United States v. Leazar*, 460 F.2d 982, 984 (9th Cir. 1972) (patroller's olfactory detection of  
2 marijuana odor in arrestee's vehicle created probable cause for arrest).

3 Cruz avers that Phillips fabricated the odor of marijuana and maintains that there was no  
4 marijuana present anywhere in the vehicle or on his person. Doc. #27, pp. 3-4. In support thereof,  
5 Cruz offers the fact that a subsequent search of the vehicle did not reveal the presence of any  
6 marijuana in the vehicle. *Id.* Moreover, Cruz asserts that if Petey was reliable in failing to detect  
7 the presence of marijuana, then Phillips must have fabricated the claim that he detected the odor of  
8 marijuana because Petey only alerted to closed bags of currency that were concealed in the trunk of  
9 the vehicle. *Id.* at 5. On the other hand, Cruz asserts that if Phillips did not fabricate the claim that  
10 he detected the odor of marijuana, then Petey must be unreliable because he failed to alert to the  
11 driver's side of the vehicle or to Cruz himself where Phillips detected the odor. *Id.* The Court  
12 rejects Cruz's false dichotomy, as it is entirely conceivable that the odor Phillips detected was  
13 coming from either the trunk or the rear of the vehicle, to which Petey later alerted, or from Cruz's  
14 person, to which Petey was not exposed.<sup>3</sup> Nevertheless, even if the Court were to disregard  
15 Phillips' testimony that he detected the odor of marijuana, the remaining circumstances, when  
16 considered together, support a finding of reasonable suspicion.

17 2. *Strong Odor of Air Freshener*

18 Also upon approaching Cruz's vehicle, Phillips detected a strong odor of air freshener  
19 coming from the interior.<sup>4</sup> Doc. #29, ¶10. Phillips testified that, based on his training and  
20 experience with high-level drug offenses, he was aware that persons involved in drug trafficking  
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22 <sup>3</sup> Phillips only conducted a "pat-down" of Cruz for the presence of weapons, not contraband.  
23 Doc. #29, ¶11. Moreover, Cruz does not contest that his person was not searched for drugs.

24 <sup>4</sup> A subsequent search of the vehicle yielded the discovery of an air freshener container under  
25 the front passenger seat of the vehicle. Doc. #29, ¶23; Doc. #29, Ex. 17. Although Cruz initially  
26 maintained that air freshener was not found in the vehicle (Doc. #27, p. 3), he does not contest Phillip's  
Second Declaration or the authenticity of Exhibit 17, which depicts the air freshener container (Doc.  
#31). Moreover, he appears to concede the presence of an air freshener. Doc. #31, p. 1.

1 will use excess amounts of air freshener in an effort to mask the odor of drugs. *Id.*; Doc. #29, ¶2.  
2 While the use of air freshener, even in large quantities, may not raise the suspicions of an average  
3 person, it did raise the suspicions of Phillips, who had training and experience related to drug  
4 interdiction. *See Cortez*, 449 U.S. at 418 (an officer's training and experiences enable him [or her]  
5 to draw inferences that "might well elude an untrained person"). Accordingly, the Court finds this  
6 factor to be relevant in the determination of reasonable suspicion.

7                   3.       *Expired Rental Agreement*

8           Upon request, Cruz produced the rental agreement for the vehicle, which showed that the  
9 rental period for the vehicle began on June 28, 2010, in Las Vegas and was due back to Las Vegas  
10 on July 5, 2010.<sup>5</sup> Doc. #29, ¶12. Although Cruz explained that he had extended the rental period  
11 over the phone, and there is nothing inherently suspicious or illegal about doing so, the Court finds  
12 that this factor is at least minimally relevant in the total calculus of reasonable suspicion, especially  
13 in light of Cruz's unusual travel itinerary.

14                   4.       *Unusually Nervous and Frantic Demeanor*

15           Phillips observed Cruz to be frantic and exhibit obvious signs of nervousness and anxiety as  
16 he looked for the rental agreement. Doc. #29, ¶13. Additionally, Phillips noticed that Cruz's hands  
17 were shaking uncontrollably as he repositioned the GPS device. *Id.* Phillips testified that, based on  
18 his training and experience, he was aware that persons involved in criminal activity will often  
19 exhibit signs of extreme nervousness and anxiety during routine traffic stops and interactions with  
20 law enforcement. *Id.*

21           While nervousness and anxiety during an encounter with law enforcement alone cannot  
22 support reasonable suspicion, it may factor into the Court's assessment of the totality of the  
23 circumstances. *See United States v. Hernandez-Alvarado*, 891 F.2d 1414, 1418-19 (9th Cir. 1989)  
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25                   <sup>5</sup> Cruz concedes that inquiring as to the validity of his rental agreement was permissible under  
26 the Fourth Amendment. Doc. #27, p. 6.



(defendant's alleged nervousness is insufficient to create reasonable suspicion); *see also United States v. Salzano*, 158 F.3d 1107, 1113 (10th Cir. 1998) (noting that "it is common for most people 'to exhibit signs of nervousness when confronted by a law enforcement officer' whether or not the person is currently engaged in criminal activity") (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)); *United States v. Mesa*, 62 F.3d 159, 162-63 (6th Cir. 1995) (finding that "[a]lthough there are a plethora of cases referring to a defendant appearing nervous, nervousness is generally included as one of several grounds for finding reasonable suspicion and not a ground sufficient in and of itself"), abrogated on other grounds by *United States v. Aguilera-Pena*, 426 Fed. Appx. 368 (6th Cir. 2011). Accordingly, the Court shall consider Cruz's nervousness and anxiety as one factor in determining whether Phillips had reasonable suspicion.

5. *Prior Conviction for Drug Trafficking and Admission of Prior Sale of Drugs*

While awaiting the results of the routine license check, Phillips again approached Cruz outside of the vehicle and engaged in conversation.<sup>6</sup> Doc. #29, ¶16. At that point, Cruz informed Phillips that he had a prior drug-related arrest. *Id.* Cruz further explained that he used to sell drugs in Battle Mountain, but was no longer involved in that illegal activity. *Id.* The records check subsequently reflected a prior drug-related arrest and conviction for drug trafficking. *Id.*

While a person's criminal history, standing alone, is not sufficient to support a finding of reasonable suspicion, it is, nevertheless, appropriate and permissible to consider that history in the total calculus of reasonable suspicion. *See United States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013) (en banc) (citing *Burrell v. McIlroy*, 464 F.3d 853, 858 n.3 (9th Cir. 2006) ("Although a prior criminal history cannot alone establish reasonable suspicion . . . to support a detention or an arrest, it is permissible to consider such a fact as part of the total calculus of information in th[at] determination[ ].")).

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<sup>6</sup> Cruz concedes that checking the validity of his driver's license was permissible under the Fourth Amendment. Doc. #27, p. 6.

1 To the extent Cruz contends that Phillip's questions regarding his prior drug conviction  
2 during the initial traffic stop were not reasonably related to the justification for the stop, and thus  
3 improper, the Court disagrees.<sup>7</sup> *See Mendez*, 476 F.3d at 1080 ("no reasonable suspicion is  
4 required to justify questioning that does not prolong the stop"); *see also Turvin*, 517 F.3d at  
5 1101-03 (finding that an otherwise valid traffic stop is not rendered unlawful for Fourth  
6 Amendment purposes simply because the officer asks questions unrelated to the purpose of the  
7 traffic stop). Cruz does not contend, nor is there any indication in the record, that Phillips'  
8 unrelated questioning impermissibly prolonged the initial traffic stop. Accordingly, the Court finds  
9 it appropriate to consider Cruz's prior conviction and related drug history in the total calculus of  
10 reasonable suspicion.

11 6. *Odd Travel Plans and Stressed Reaction to Questions in Relation Thereto*

12 Also while awaiting the results of the routine license check, Phillips questioned Cruz about  
13 his travel plans.<sup>8</sup> Doc. #29, ¶16. Cruz stated that he was on his way back from Battle Mountain to  
14 Fairfield to pick up his mother and drive her back to Battle Mountain for a friend's funeral. *Id.* He  
15 also stated that he rented the vehicle in Las Vegas to drive to Battle Mountain to visit his family.  
16 *Id.* Phillips observed that during the conversation, Cruz repeatedly attempted to divert the  
17 conversation away from his travel plans by asking about Phillips' history and where he attended  
18 high school. *Id.* Cruz repeatedly put his hands into his pockets and then removed them, was  
19 pacing in front of Phillips and kicking the dirt beneath his feet, and exhibited other signs of undue  
20 stress during Phillips' questioning. *Id.*

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21 <sup>7</sup> Cruz cites *United States v. Perez*, 37 F.3d 510, 513 (9th Cir. 1994), for the proposition that  
22 "[q]uestions asked initially during a traffic stop must be reasonably related to the justification for the  
23 stop." Doc. #27, p. 7. In *United States v. Mendez*, 476 F.3d 1077 (9th Cir. 2007), the Ninth Circuit  
24 expressly overruled *Perez* as to the issue of police questioning on matters unrelated to the purpose of  
the initial detention after the Supreme Court's decision in *Muehler v. Mena*, 544 U.S. 93 (2005).

25 <sup>8</sup> Cruz admits that Phillips' inquiries regarding his destination and general travel plans were  
26 "probably justifiable." Doc. #27, p. 7; *United States v. Hill*, 195 F.3d 258, 268 (6th Cir. 1999)  
(questions regarding purpose of travel were reasonable at the outset of a traffic stop).

1 Certainly, either of Cruz's stated reasons for traveling to Battle Mountain were not, in and  
2 of themselves sufficient to warrant further detainment. Nevertheless, the Court finds Cruz's  
3 unusual travel from Las Vegas to Battle Mountain to Fairfield and back to Battle Mountain,  
4 coupled with his own admission that he used to sell drugs in Battle Mountain would certainly give  
5 pause to an officer with Phillips' experience in drug interdiction. Moreover, Cruz's inconsistent  
6 statements regarding the purpose for his trip to Battle Mountain undoubtedly added to the  
7 suspiciousness of Cruz's already suspicious travel plans. *See, e.g., United States v. Bracamontes*,  
8 614 F.3d 813, 816 (8th Cir. 2010) (inconsistent statements as to the purpose of travel by occupants  
9 of a vehicle established the requisite reasonable suspicion to justify detainment for further  
10 investigation); *United States v. Lyons*, 486 F.3d 367, 372 (8th Cir. 2007) (combination of  
11 detainee's unusual itinerary, contradictory statements regarding travel, and large amount of luggage  
12 for a comparatively short trip, when viewed together, warranted further investigation).

13 In sum, the Court concludes that the totality of the aforementioned circumstances  
14 ascertained by Phillips during the initial traffic stop were sufficient to support Cruz's continued  
15 investigative detention based on reasonable suspicion of criminal activity. Although these  
16 circumstances (aside from the odor of marijuana), individually, may have been consistent with  
17 innocent and otherwise lawful behavior, taken together, from the perspective of an officer  
18 experienced in drug interdiction, they furnished reasonable suspicion that Cruz was engaged in  
19 criminal activity. *See United States v. Simpson*, 609 F.3d 1140, 1152-53 (10th Cir. 2010)  
20 (concluding that trooper had reasonable suspicion that criminal activity was afoot where detainee  
21 had criminal record of drug trafficking, was acting extremely nervous, and provided evasive  
22 answers that described a fairly implausible travel plan). Accordingly, the Court concludes that  
23 Cruz's prolonged investigatory detention was justified at its inception under the Fourth  
24 Amendment.

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1           **B.       Reasonable Scope**

2           Second, assuming the investigative stop was justified at its inception, the duration of the  
3 stop must be assessed for reasonableness. In *United States v. Sharpe*, the Supreme Court held that  
4 in assessing whether a detention is too long in duration to be justified as an investigative stop, it is  
5 proper to examine whether the police diligently pursued a means of investigation likely to confirm  
6 or dispel their suspicions quickly. 470 U.S. at 686.

7           Here, the parties agree that Cruz was detained for twenty to thirty minutes beyond the initial  
8 traffic stop to wait for the arrival of a canine unit. Because Lee's NHP vehicle was temporarily out  
9 of service, and there were no other canine units available with either RPD or WCSO, it was  
10 necessary to await Lee's arrival. Under these circumstances, the Court finds that Phillips diligently  
11 pursued his investigation through means which would as quickly as possible dispel or confirm his  
12 reasonable suspicion that Cruz was engaged in criminal activity. As such, Cruz was not detained  
13 longer than necessary to effectuate the investigation. See *United States v. Maltais*, 403 F.3d 550,  
14 557-58 (8th Cir. 2005) (detention of 90 to 120 minutes to arrange for arrival of drug dog was  
15 reasonable where it was impractical under the circumstances for law enforcement to respond any  
16 sooner than it did); *United States v. Mendoza*, 468 F.3d 1256, 1261 (10th Cir. 2006) (40-minute  
17 detention awaiting arrival of nearest dog handler and drug dog was reasonable); *United States v.*  
18 *Orsolini*, 300 F.3d 724, 730 (6th Cir. 2002) (50-minute detention was permissible when 35 of those  
19 minutes elapsed while drug-sniffing dog was en route). Accordingly, the Court finds that the  
20 twenty to thirty minutes during which Cruz was detained for further investigation was reasonable  
21 under the circumstances and, therefore, did not violate the Fourth Amendment.

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1 **IV. Conclusion**

2 The Court concludes that Cruz's twenty to thirty minute investigative detention following  
3 the initial traffic stop was reasonable and thus did not run afoul of the Fourth Amendment.  
4 Accordingly, the evidence that was seized as a result thereof shall not be suppressed pursuant to  
5 Rule G(8)(a).

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7 IT IS THEREFORE ORDERED that Cruz's Motion to Suppress Evidence Pursuant to  
8 Supplemental Rule G(8) (Doc. #27) is DENIED.

9 IT IS SO ORDERED.

10 DATED this 25th day of March, 2014.

11   
12 LARRY R. HICKS  
13 UNITED STATES DISTRICT JUDGE  
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